AN APPEAL

from the

Supream Court of Judicature

of

Holland, Zealand and West-Friesland,

To the

KING of GREAT BRITTAIN;

Or

The Case briefly stated between *George Carew* Esquire, Administrator of the Goods and Chattels of Sir *William Courten* Knight deceased, with his Will annexed,

And

The Heirs of Sir Jacob Cats, *late Pensionaris of Holland and West-Friesland.*

Printed in the Year 1674.

The Caſe between *George Carew* Eſquire, Adminiſtrator of Sir *William Courten*,

and

The Heirs of Sir Jacob Cats, *late Penſionaris of Holland.*

Sir *Jacob Cats* became bound in the City of London, unto Sir *William Courten* of London Knight, by a writing obligatory dated the 29 of July 1631. in the penalty of 3000. Pounds, conditioned for the payment of 2080. Pounds on the 12. of February following, according to the Cuſtome of England.

The money was not paid but continued at intereſt during Sir *William Courten's* life, who dyed in the Year 1636, indebted to ſeverall Perſons ſeventy thouſand Pounds Sterling and upwards, and leaves *William Courten* Eſquire, his Son and Heir his ſole Executor.

William Courten the Executor having contracted many debts of his own, became inſolvent, and abſented himſelf in the Year 1643. from his Creditors, and alſo from the further adminiſtration of his Fathers Eſtate; but before he left the Kingdom, Mr *Jacob Pergens*, a free Denizon of England inhabiting at Amſterdam, addreſſed himſelf to Mr. *Courten* for ſatisfaction of ſome

money, due to him from Sir *William Courten*, and Mr. *Courten* himſelf as *Pergens* pretended.

William Courten the Executor by a Letter of Attorney and Aſſignment, dated the 31. of October 1643, grants and transfers the ſaid Bond of 3000. Pounds unto Mr. *Pergens*, with power to ſue Sir *Jacob Cats* for the ſaid debt and dammages to his own uſe.

In the Year 1645. *Jacob Pergens* ſummons Sir *Jacob Cats* (then Penſionaris of Holland) into the Provinciall Court at the Hague, and declares againſt him for the ſaid moneys; During the ſaid controverſie Sir *Jacob Cats* applyes himſelf to the Commiſſioners concerning Banckrupts in England, who had a Commiſſion (grounded upon the Statutes in ſuch caſes made and provided) to inquire after Mr. *Courtens* particular Eſtate for ſatisfaction of his own debts, but being adviſed that the Commiſſioners had no legall Authority to intermedle with Sir *William Courtens* Eſtate, which was lyable in another right for the payment of his own proper debts, Sir *Jacob Cats* declined from any further Treaty with them.

Nevertheleſs the Commiſſioners by their writing Authentick, prohibited Sir *Jacob Cats* to pay any money to *Jacob Pergens* upon the ſaid Bond. Then *Pergens* ſoon after obtained a Decree out of the Provinciall Court, to cite and admonish to Commiſſioners in England, if they had any right or pretence to the ſaid Bond or money

ney due thereupon, they should institute the same before the said Provinciall Court at a day certain, or be condemned in perpetuall silence, whereupon the Commissioners appeared by their Advocate. Then *Pergens* by an insinuation prohibited Sir *Jacob Cats* from payment of any money to them or to any other, or to make any agreement with them; Yet notwithstanding (*de bene esse*) on the 18. of July 1653. *Jacob Pergens* procured an Assignment of the said Bond from the said Commissioners for 400. Pounds, to the end they might let their Process cease, whereby *Pergens* might proceed against Sir *Jacob Cats*, which he did accordingly.

But *pendente lite William Courten* the Executor dyed *intestate* in Italy, whereby the action abated against Sir *Jacob Cats*, according to the known rule in Law: *Quod actio personalis moritur cum persona.*

Afterwards upon the Kings most happy restauration, Letters of Administration of the Goods, and Chattels, Rights, Debts, and Credits of Sir *William Courten* with his Will annexed, were granted on the 14. of July 1660. to the said *George Carew*; yet notwithstanding *Jacob Pergens* (*who had formerly by another fraudulent practise, gotten into his hands* 8500 *gilders from the* East-India Company, *upon pretended assignment from the said* William Courten) prevayled with the Provinciall Court on the 4. of November 1661. to give Sentence in the said cause against Sir *Jacob Cats*, and condemned him to pay

the said money, due upon the said Bond, unto *Jacob Pergens*, and interest thereof at 8. per cent, soon after Sir *Jacob Cats* dyed, and his Heirs appealed from the said Sentence to the supream Court of Judicature at the Hague.

Then *George Carew*, in his quality as Administrator, intervened in the said cause, before the Lords of the said supream Court, in the month of May 1662, where having by his Request in writing to their Lordships made known his right and property to the said money, concluded in his Demand that *Pergens* should be condemned to acquiess in the said cause, and deliver up the Bond, as having no right to the Money by the said Assignments from Mr. *Courten*, or the Commissioners, conformable to the Laws of England, where the debt was contracted and the Bond made, and also demanded that the Heirs of Sir *Jacob Cats* should be ordered to pay the Money, due upon the said Bond to the said *George Carew*, in his quality as Administrator of Sir *William Courten*, the same being an unadministred effect of Sir *William Courten's* Estate.

Then the Advocates of both sides desired time to consult concerning the Laws of England in that point, and to inform the Court therein accordingly.

The Case being drawn up, and agreed by the Advocats of both parties, severall of the Judges in England gave their opinions upon the same, under their hands

hands before a publique Notary, which was transmitted to the supream Court of Judicature of Holland: *Wherein was affirmed that by the Law of England, the Bond of Sir* Jacob Cats *could not be granted or assigned to Mr.* Pergens, *either by the Executor or Commissioner. That after the death of* William Courten (*Executor in Auter droit*) *the action against Sir* Jacob Cats *abated, but when the Administration was granted to* Carew, *the said action was properly to be received by him as having the only right in Law to the said debt, the property being not changed by any Act of* Mr. Courten *or the Commissioners, but remained as assets liable to the Testators debts according to the nature and priority in Law, and the intervention of* Carew *in the said cause was a continuance of the said action,* Carew *having the right of prosecution to receive the same, allowing the said* Pergens *in equity his costs of suit.*

Then Pergens made a dilatory & impertinent exception, that he was a Burger of Amsterdam, although his dwelling-house was in the Hague, and pretended he ought to be first impleaded before his Competent Judges there, and not in the Hague before the supream Court of Judicature where the suit depended: whereupon the Court rejected Mr. *Carews* suit, and decreed that the *Heer van Carnisse*, and the rest of the Heirs of Sir *Jacob Cats*, should pay the said Money to *Pergens* with mitigation of the Interest, and that *Pergens* should give them Caution to be saved harmless against *Carew*, which

which was reſpectively done to the apparent wrong of Mr. *Carew*, and ſeverall of his Majeſties good Subjects in England, that claim under Mr. *Carews* adminiſtration the effects of Sir *William Courten's* Eſtate unadminiſtred.

Wherefore they appeal to the King of *Great Brittain*, for protection and means to recover their juſt rights, being of moſt dangerous conſequence againſt the Law of property, to ſuffer Forreign Courts of Judicature to intrench upon the Laws of England, or to wrong the Judicature thereof. And the rather for that the Lords of the ſupream Court at the Hague, were preadmonished by ſeverall learned Advocates there, as follows:

1. *That Mr.* Carew *being a Stranger, was to be admitted at his firſt inſtance by the inſtructions of their own Court.*

2. *That the Court were poſitively obliged to give judgements according to the Law of England, where the Money was lent and the Bond was ſigned.*

3. *That by the Laws of Nations all Courts of Juſtice were to give Sentences, in Caſes of Contracts, according to the Law of the Country where ſuch Contracts were made.*

4. *That the ſupream Court was the proper place of Judicature in this Caſe of Interventon, and that if they did not admit Mr.* Carew prima inſtantia, *they would do him an apparent injuſtice, and wrong both the Judicature of England, and of the United Netherlands; Yet the Penſionaris* Iohn de Witt *being a Kinſman to Mr.* Pergens *his Wife, prevailed with ſome of the Lords of the ſupream Court, to deny Mr.* Carew *that ordinary Juſtice, which ought to be adminiſtred to all Strangers, whereby he hath ſuffered to his dammage* 5000. *Pounds Sterling and upwards.*

FINIS.